

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NOTICE OF PROPOSED AMENDMENTS TO FIFTH CIRCUIT RULES

Pursuant to 28 U.S.C. § 2071, we give notice the court is considering adoption of the following amendments to the 5TH CIR. R. Proposed language changes in the rules are shown in shaded background if viewed in paper copy, or in “redline text” if viewed in certain word processing software. Deleted language is stricken through.

We must receive written comments on the proposed changes to the 5TH CIR. R. no later than July 25, 2005. The address to use is:

Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
ATTN: Rule Changes
600 Camp Street
New Orleans, LA 70130

You may also offer comments in electronic form to:

Rules.Changes@ca5.uscourts.gov.

The proposed amendments are at the enclosure, with explanatory comments where deemed necessary.

Charles R. Fulbruge III
Clerk of Court

5/26/05

ENCLOSURE

1. Amend Rule 10.2 to read: ***Form of Record.*** *The district court must furnish the record on appeal to this court in paper form, and in electronic form whenever available. The paper and electronic records on appeal must be consecutively numbered and paginated. The paper record must be bound in a manner that facilitates reading. ~~The district court clerk must number the pages consecutively.~~*

2. Absent Congressional action, proposed FED. R. APP. P. 28(c) and (h), will become effective on December 1, 2005. That rule will delete references to cross-appeals in briefs, and a new FED. R. APP. P. 28.1 will be added covering cross-appeals with great specificity. These changes will affect two of our rules. FED. R. APP. P. 28.1 will replace present 5TH CIR. R. 28.4. Accordingly, it is deleted as shown below.

~~**28.4 Briefs in Cross-Appeals.** FED. R. APP. P. 28(h) determines which party is an appellant and which party is a cross-appellant. The appellee/cross-appellant should file a single brief containing both the argument as an appellant and the response to the opening brief. The appellant/cross-appellee then has 30 days to file a combined response and reply. The usual reply brief time then applies to the cross-appellant's reply.~~

Thereafter currently designated 5TH CIR. R. 28.5, 28.6 and 28.7 are renumbered as rules 28.4, 28.5 and 28.6 respectively.

The new FED. R. APP. P. 28.1(d) establishes the color of brief colors in cross-appeals. 5TH CIR. R. 32.6, shown below is deleted.

~~**32.6 Color of Covers of Briefs in Cross-Appeals.**~~

~~When the appellee has filed a cross appeal the brief color cover is as follows:~~

~~Brief for appellant - Blue~~

~~Brief for Appellee-Cross-Appellant - Red~~

~~Brief for Cross-Appellee and Reply Brief for Appellant - Red~~

~~Reply Brief of Cross-Appellant - gray~~

3. To comply with the new federal rules on en banc voting, 5TH CIR. R. 35.6 is amended as follows:

35.6. Determination of Causes En Banc and Composition of En Banc Court. *A cause shall be heard or reheard en banc when it meets the criteria for en banc set out in FED. R. APP. P. 35(a). For purposes of en banc voting under 28 U.S.C. § 46(c), the term "majority" is defined as a majority of all judges of the court in regular active service*

~~*presently appointed to office. Judges in regular active service who are disqualified for any reason or who cannot participate in the decision of an en banc case nevertheless shall be counted as judges in regular active service.*~~

The en banc court shall be composed of all active judges of the court plus any senior judge of the court who participated in the panel decision who elects to participate in the en banc consideration. This election is to be communicated timely to the chief judge and clerk. Any judge participating in an en banc poll, hearing, or rehearing while in regular active service who subsequently takes senior status may elect to continue participating in the final resolution of the case.